IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.492 OF 2005
IN
NOTICE OF MOTION NO.4196 OF 2004
IN
L.C. SUIT NO.4782 OF 2004

1. Yasmeen Gulamali Bagadia & ors. Appellants
vs.
1.M/s.Lokhandwala Builders & ors. Respondents

Mr.Y.E.Moloman for the appellants.

Mr.Satish C.Kekane for Mr.M.G.Kulkarni for the respondents 1 to 11.

Mr.A.J.Almeida for the respondent no.12.

Mr.R.A.Malandkar for the respondent no.13-B.M.C.

CORAM : B.H. MARLAPALLE,J.

DATED : 2nd September 2005

P.C.

Heard the learned counsel for the appellants who are defendants 3 to 10 in L.C. Suit No.4782/2004. They are aggrieved by the order dated 25.2.2005 passed by the learned Judge of the City Civil Court, Greater Mumbai making the notice of motion no.4196/2004 absolute in terms of prayer (a).

2. The said prayer clause reads as under:

> "(a) that pending the hearing and final disposal of this suit, defendants their servants, agents and persons claiming through them be restrained by order of injunction from carrying out construction, excavation, digging operation in the compulsory open space/house-gally admeasuring 50 ft. x 21 ft. situated between Nazarali building and Aga

building at 25, Dharamsi Street, Mumbai-4000 003, more particularly shown in Exhibit B to the plaint."

3. Having considered the averments made in the plaint, the reply filed by; the present appellants as well as the Municipal Corporation of Gr. Mumbai, it is clear that the appellants building by name "Aga" is located on the plot bearing city survey no.3598 and the building of the defendants known as "Nazarali" is located on city survey no.3599. The suit plot/land is the strip admeasuring 50' x 21' between these two buildings and the learned Judge of the City Civil Court has referred to it as house-gally as defined under Section 3(v) of the Mumbai Municipal Corporation Act, 1888. The reply filed by the Corporation does not say that the building permission granted for the building to be constructed by the defendants is on the portion of the land which is part of the Aga building area. Under the circumstances, the reasoning given by the Court below in support of the order of temporary injunction cannot be faulted.

4. The appeal is, therefore, dismissed in limine.

Trial of the Suit is expedited.

5. Civil Application does not survive.

(B.H. MARLAPALLE,J.)